



DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS 2739-23; DHS Docket No. USCIS 2021-0020; RIN 1615-ZB90]

Implementation of Employment Authorization for Individuals Covered by Deferred Enforced Departure for Hong Kong

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security.

ACTION: Notice of employment authorization for individuals covered by Deferred Enforced Departure (DED).

SUMMARY: On January 26, 2023, President Joseph Biden issued a memorandum to the Secretary of State and the Secretary of Homeland Security (Secretary) determining that it was in the foreign policy interest of the United States to extend and expand the deferral of removal of certain Hong Kong residents present in the United States through February 5, 2025, and to provide them with employment authorization documentation. The memorandum directed the Secretary to make provision for immediate allowance of employment authorization for such individuals. This Notice provides information about Deferred Enforced Departure (DED) for eligible Hong Kong residents and provides information on how eligible individuals may apply for DED-based Employment Authorization Documents (EADs) with USCIS. Through this notice, DHS is providing employment authorization, including procedures for obtaining related documentation, for covered individuals through February 5, 2025, and automatically extending the validity of DED-based EADs bearing a Category Code of A11 and a “Card Expires” date of February 5, 2023 through February 5, 2025. Finally, this Notice provides instructions for DED-eligible Hong Kong residents on how to file for advance travel authorization. For the purposes of this Notice, a Hong Kong resident is defined as an individual of any nationality, or without nationality, who has met the requirements for, and been granted, a Hong Kong Special

Administrative Region Passport, a British National Overseas Passport, a British Overseas Citizen Passport, a Hong Kong Permanent Identity card, or a Hong Kong Special Administrative Region (HKSAR) Document of Identity for Visa Purposes.

DATES: DED and employment authorization for noncitizens covered by DED for Hong Kong residents is effective January 26, 2023, through February 5, 2025. Employment authorization and the procedures for obtaining EADs in this Notice apply to any of the following individuals (except those who are subject to any of the ineligibilities described in President Biden’s memorandum to the Secretaries of State and Homeland Security): noncitizens who are Hong Kong residents, who were covered by DED until February 5, 2023; as well as Hong Kong residents, who have been continuously physically present in the United States since January 26, 2023. Hong Kong residents must meet all eligibility criteria for DED described below.

FOR FURTHER INFORMATION CONTACT:

- You may contact Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800-375-5283.
- For further information on DED, including additional information on eligibility, please visit the USCIS DED webpage at <https://www.uscis.gov/humanitarian/deferred-enforced-departure>. You can find specific information about DED for Hong Kong residents by selecting “DED Covered Country: Certain Hong Kong Residents” from the menu on the left of the DED webpage.
- If you have additional questions about DED, please visit <https://www.uscis.gov/tools>. Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).
- Applicants seeking information about the status of their individual cases may check Case

Status Online, available on the USCIS website at <https://www.uscis.gov>, or visit the USCIS

Contact Center at <https://www.uscis.gov/contactcenter>.

- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

CFR – Code of Federal Regulations
DED – Deferred Enforced Departure
DHS – U.S. Department of Homeland Security
EAD – Employment Authorization Document
FNC – Final Non-confirmation
Form I-131 – Application for Travel Document
Form I-765 – Application for Employment Authorization
Form I-797 – Notice of Action
Form I-9 – Employment Eligibility Verification
Form I-912 – Request for Fee Waiver
FR – Federal Register
Government – U.S. Government
IER – U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
SAVE – USCIS Systematic Alien Verification for Entitlements Program
Secretary – Secretary of Homeland Security
TPS – Temporary Protected Status
TTY – Text Telephone
USCIS – U.S. Citizenship and Immigration Services
U.S.C. – United States Code

Purpose of this Action

Pursuant to the President’s constitutional authority to conduct the foreign relations of the United States, President Biden has concluded that it is in the foreign policy interest of the United States to defer through February 5, 2025, the removal of certain Hong Kong residents, who were present in the United States since January 26, 2023.¹ Through this Notice, as directed by the President, DHS is establishing procedures for individuals covered by DED for Hong Kong to

¹ See Presidential Memorandum for the Secretary of State and the Secretary of Homeland Security on Extending and Expanding Eligibility for Deferred Enforced Departure for Certain Hong Kong Residents, January 26, 2023, <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/01/26/memorandum-on-extending-and-expanding-eligibility-for-deferred-enforced-departure-for-certain-hong-kong-residents/> (*reprinted at* 88 FR 6143 (Jan. 31, 2023)).

apply for EADs valid through February 5, 2025, and automatically extending through February 5, 2025 the validity of DED-based EADs bearing a Category Code of A11 and a “Card Expires” date of February 5, 2023.

What is Deferred Enforced Departure (DED)?

- DED is an administrative deferral of removal ordered by the President. The authority to extend DED arises from the President’s constitutional authority to conduct the foreign relations of the United States. The President can authorize DED for any reason related to this authority. DED has been authorized in situations where foreign nationals or other groups of noncitizens may face danger if required to return to countries or any part of such foreign countries experiencing political instability, conflict, or other unsafe conditions, or when there are other foreign policy reasons for allowing a designated group of noncitizens to remain in the United States.
- Although DED is not a specific immigration status, individuals covered by DED are not subject to removal from the United States, usually for a designated period of time. Furthermore, the President may direct that certain benefits, such as employment authorization or advance travel authorization, be available to the noncitizens covered by the DED directive.
- If the President provides for employment or advance travel authorization, USCIS administers those benefits. USCIS publishes a *Federal Register* notice to inform the covered population on how to apply for any benefits provided.
- The President issues directives regarding DED and who is covered via presidential memorandum. The qualification requirements for individuals who are covered by DED are based on the terms of the President’s directive regarding DED and any relevant implementing requirements established by DHS. Since DED is a directive to defer removal of an individual, rather than a specific immigration status like Temporary Protected Status (TPS), there is no DED application form required for an individual to be covered by DED.

Form I-765, Application for Employment Authorization, may be filed if a DED-covered individual wants an EAD.

Background

The President has determined that there are compelling foreign policy reasons to extend and expand DED for certain Hong Kong residents. In his January 26, 2023 memorandum, he explained that “[t]he United States is committed to a foreign policy that unites our democratic values with our foreign policy goals, which is centered on the defense of democracy and the promotion of human rights around the world. Offering safe haven to Hong Kong residents who have been deprived of their guaranteed freedoms in Hong Kong furthers United States interests in the region.”

Ur M. Jaddou,
Director,
U.S. Citizenship and Immigration Services.

Eligibility and Employment Authorization for DED

How will I know if I am eligible for employment authorization under the DED Presidential Memorandum for Hong Kong residents?

The procedures for employment authorization in this Notice apply to non-U.S. citizens who are Hong Kong residents (regardless of their country of birth), who are present in the United States and who were covered by DED until February 5, 2023, as well as Hong Kong residents, who have been continuously physically present in the United States since January 26, 2023, except for noncitizens:

- Who have voluntarily returned to Hong Kong or other parts of the People's Republic of China (PRC) after January 26, 2023;
- Who have not continuously resided in the United States since January 26, 2023;
- Who are inadmissible under section 212(a)(3) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(3)) or deportable under section 237(a)(4) of the INA (8 U.S.C. 1227(a)(4));
- Who have been convicted of any felony or two or more misdemeanors committed in the United States, or who meet any of the criteria set forth in section 208(b)(2)(A) of the INA (8 U.S.C. 1158(b)(2)(A));
- Who are subject to extradition;
- Whose presence in the United States the Secretary of Homeland Security has determined is not in the interest of the United States or presents a danger to public safety; or
- Whose presence in the United States the Secretary of State has reasonable grounds to believe would have potentially serious adverse foreign policy consequences for the United States.

What will I need to file if I am covered by DED and would like to obtain an EAD?

If you are covered by DED for Hong Kong and want a DED-based EAD, you must file Form I-765, Application for Employment Authorization. Please carefully follow the Form I-765 instructions when completing the application for an EAD. When filing the Form I-765, you must:

- Indicate that you are eligible for DED by entering “(a)(11)” in response to Question 27 on the Form I-765; and
- Submit the fee for the Form I-765 (or request a fee waiver).

The regulations require individuals covered by DED who request an EAD to pay the fee prescribed in 8 CFR 103.7 (Oct. 1, 2020) for the Form I-765. *See also* 8 CFR 274a.12(a)(11) (employment authorization for DED-covered individuals); and 8 CFR 274a.13(a) (requirement to file EAD application if EAD desired). If you are unable to pay the fee, you may request a fee waiver by submitting a Request for Fee Waiver (Form I-912).

If you currently have a DED-based EAD bearing a Category Code of A11 and a “Card Expires” date of February 5, 2023 and are covered by DED under the January 26, 2023 Presidential Memorandum, your EAD is automatically extended through February 5, 2025, even though the expiration date stated on the front of the card has passed.

Supporting Documentation

The filing instructions on Form I-765 list all the documents needed. You may also find information on the initial required documents on the USCIS website at <https://www.uscis.gov/i-765>. If USCIS determines after reviewing your submission that it needs additional information, it will issue you a Request for Evidence (RFE).

How will I know if USCIS will need to obtain biometrics?

If biometrics are required to produce your EAD, you will be notified by USCIS and scheduled for an appointment at a USCIS Application Support Center.

Where do I submit my completed DED-based Application for Employment Authorization (Form I-765)?

For a DED-based EAD, mail your completed Form I-765 and supporting documentation to the proper address in Table 1.

Table 1-Mailing Addresses

If you are ...	Mail to...
Mailing your form through the U.S. Postal Service (USPS)	USCIS, Attn: DED Hong Kong P.O. Box 805283, Chicago, IL 60680-5283
Using FedEx, UPS, or DHL	USCIS, Attn: DED Hong Kong (Box 805283), 131 S. Dearborn St., 3rd Floor, Chicago, IL 60603-5517

You may file Form I-765 and Form I-131, Application for Travel Document together or separately. More information on filing a Form I-131 appears below.

Can I file my DED-based Form I-765 electronically?

No. Electronic filing is not available when filing a DED-based Form I-765.

What happens after February 5, 2025, to DED-based EADs?

This DED authorization is set to end on February 5, 2025. After that date, employers can no longer accept EADs with a Category Code of A11 and a “Card Expires” date of February 5, 2023 or February 5, 2025. Employees will need to present other evidence of continued work authorization.

Travel

In its discretion, DHS may provide advance travel authorization as a benefit of DED for eligible Hong Kong residents. You must file for advance travel authorization if you wish to travel outside of the United States. If granted, advance travel authorization gives you permission to leave the United States and return during a specific period. To request advance travel authorization, you must file Form I-131, Application for Travel Document, available at <https://www.uscis.gov/i-131>. You may file Form I-131 together with your Form I-765 or separately. When filing the Form I-131, you must:

- Select Item Number 1.d. in Part 2 on the Form I-131; and
- Submit the fee for the Form I-131.

If you leave the United States without first receiving advance travel authorization, you may no longer be eligible for DED and may not be permitted to reenter the United States. Please also be advised that if you return to Hong Kong or other parts of the PRC, you may not be permitted to resume DED in the United States since the presidential memorandum extending and expanding eligibility for DED for certain Hong Kong residents excludes individuals who have voluntarily returned to Hong Kong or other parts of the PRC after January 26, 2023.

Mailing Information

Mail your completed Form I-131 to the proper address provided in Table 1.

Supporting Documentation

The filing instructions for Form I-131 list all the documents you need to include with your application. You may also find information on the acceptable documentation and DED eligibility on the USCIS website at <https://www.uscis.gov/humanitarian/deferred-enforced-departure>. If USCIS needs additional evidence, it will issue you a RFE.

General employment-related information for individuals with DED-based EADs and their employers:

How can I obtain information on the status of my EAD request?

To get case status information about your DED-based EAD request, you can check Case Status Online at <https://www.uscis.gov>, or visit the USCIS Contact Center at <https://www.uscis.gov/contactcenter>. If your Form I-765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at <https://egov.uscis.gov/e-request/Intro.do> or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

Does this Federal Register notice automatically extend my current Hong Kong DED EAD through February 5, 2025?

Yes. Regardless of your country of birth, if you are a resident of Hong Kong, you were covered by DED for Hong Kong until February 5, 2023, and you are covered by DED under the January 26, 2023 Presidential Memorandum, this notice automatically extends your DED-based EAD bearing a February 5, 2023 “Card Expires” date and an A11 Category Code through February 5, 2025. This means that your EAD is valid through February 5, 2025, even though the “Card Expires” date has passed.

When I am hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I-9?

You can find the Lists of Acceptable Documents on the third page of Form I-9, Employment Eligibility Verification, as well as the Acceptable Documents webpage at <https://www.uscis.gov/i-9-central/acceptable-documents>. Employers must complete Form I-9 to verify the identity and employment authorization of all new employees they hire. Within three business days of hire, employees must present acceptable document(s) to their employers as evidence of identity and employment authorization to satisfy Form I-9 requirements and employers must complete Section 2 of the Form I-9. For employment that will last less than

three days, Section 2 of the Form I-9 must be completed no later than the first day of work for pay.

You may present any documentation from List A (which provides evidence of both identity and employment authorization) or documentation from List B (which provides evidence of your identity) together with documentation from List C (which provides evidence of employment authorization), or where applicable you may present an acceptable receipt. Receipts may not be accepted if employment will last less than three days. Additional information on receipts is available at <https://www.uscis.gov/i-9-central/form-i-9-acceptable-documents/receipts>. Employers may not reject a document based on a future expiration date. You can find additional information about Form I-9 on the I-9 Central webpage at <https://www.uscis.gov/I-9Central>. An EAD is an acceptable document under List A.

If I have an EAD based on another immigration status, can I obtain a new DED-based EAD?

Yes, if you are covered by DED, you can obtain a new DED-based EAD, regardless of whether you have an EAD based on another immigration status. If you want to obtain a DED-based EAD valid through February 5, 2025, you must file Form I-765 and pay the associated fee (or request a fee waiver).

Can my employer require that I provide any other documentation to prove my status, such as proof of my Hong Kong residency?

No. When completing Form I-9, employers must accept any documentation that appears on the Form I-9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Therefore, employers may not request other documentation, such as a Form I-797, Form I-797C or proof of Hong Kong residency, when completing Form I-9. Refer to the “Note to Employees” section of this *Federal*

Register notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This *Federal Register* notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888-464-4218 (TTY 877-875-6028) or email USCIS at I-9Central@dhs.gov. USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I-9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800-255-8155 (TTY 800-237-2515). IER offers language interpretation in numerous languages. Employers may also email IER at IER@usdoj.gov.

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888-897-7781 (TTY 877-875-6028) or email USCIS at I-9Central@dhs.gov. USCIS accepts calls in English, Spanish and many other languages. Employees or applicants may also call the IER Worker Hotline at 800-255-7688 (TTY 800-237-2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Form I-9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt. Employers may not require extra or additional documentation beyond what is required for Form I-9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of Tentative Non-confirmation (mismatch) must promptly inform employees of the mismatch and give such employees an opportunity to resolve the mismatch. A mismatch case result means that the information entered into E-Verify from Form I-9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of the mismatch while the case is still pending with E-Verify. A Final Non-confirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888-897-7781 (TTY 877-875-6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800-255-7688 (TTY 800-237-2515). Additional information about proper nondiscriminatory Form I-9 and E-Verify procedures is available on the IER website at <https://www.justice.gov/ier> and the USCIS and E-Verify websites at <https://www.uscis.gov/i-9-central> and <https://www.e-verify.gov>.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, if you present an automatically extended DED-based EAD referenced in this *Federal Register* notice, you do not need to show any other document, such as a Form I-797 or Form I-797C, Notice of Action or this *Federal Register* notice, to prove that you qualify for this extension. While Federal Government agencies must follow the guidelines laid

out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency your DHS-issued documentation showing you are covered by DED and/or showing you are authorized to work based on DED. Examples of such documents are:

- Your current EAD with a DED Category Code of A11, even if your country of birth noted on the EAD does not reflect the DED designation for Hong Kong; or
- Your Form I-797, Notice of Action, reflecting approval of your Form I-765; or
- Your Form I-797 or Form I-797C, Notice of Action, reflecting approval or receipt of a past or current Form I-765.

Check with the government agency requesting documentation regarding which documentation the agency will accept.

Some state and local government agencies use the Systematic Alien Verification for Entitlements (SAVE) program to confirm the current immigration status of applicants for public benefits. While SAVE can verify that an individual is covered by DED, each state and local government agency's procedures govern whether they will accept an unexpired EAD, Form I-797, or Form I-797C. If an agency accepts the type of DED-related document you present, such as a DED-based EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

- a. Give the agency a copy of the relevant *Federal Register* notice showing the EAD extension in addition to presenting your recent EAD with your A-Number or USCIS number;
- b. Explain that SAVE will be able to verify the continuation of DED using this information; and

c. Ask the agency to submit a SAVE verification request with your information and follow through with additional verification steps, if necessary, to obtain a final SAVE response verifying your coverage under DED.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of DED-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at <https://save.uscis.gov/casecheck/>. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and one immigration identifier number (A-Number or USCIS number) or Verification case number. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the response is correct, the SAVE website, <https://www.uscis.gov/save>, has detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records.